

DOCUMENT RESUME

02672 - [A1732748]

[Reconsideration of Untimely Protest against a Lack of Solicitation Restrictions]. B-188342. June 9, 1977. 2 pp.

Decision re: Miltope Corp.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (190C).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Defense Logistics Agency.

Authority: B-188342 (1977).

Protester asserted that the solicitation should be restrictively drawn, placing the protester in the sole-source position. Regardless of the merits of the previous determination of untimeliness, GAO would not question the Agency's determination that a less restrictive solicitation was needed absent evidence of fraud or intentional misconduct. (QM)

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188342

DATE: June 9, 1977

MATTER OF: Miltope Corporation--Reconsideration

DIGEST:

Protest asserting that solicitation should be restrictively drawn which would place protester in sole-source position is not for consideration as bid protest. CAO will not question agency determination that less restrictive solicitation will meet Government's needs absent evidence of fraud or intentional misconduct.

The Miltope Corporation (Miltope) requests reconsideration of our decision in the matter of Miltope Corporation, B-188342, April 18, 1977, 77-1 CPD 270, in which we dismissed as untimely Miltope's protest involving Defense Logistics Agency (DLA) solicitation DSA 900-77-R-0877.

Miltope asserts its telegraphic protest was in fact timely received as indicated by Western Union records and the encoded time of transmission. The telegram was transmitted to a machine located in the mailroom in the General Accounting Office Building, in Washington, D. C. Our earlier decision concluded that the protest was untimely because the telegram contained a date stamp indicating its receipt by our receiving office after the time for submission of proposals.

We do not find it necessary to decide whether Miltope's protest should be treated as timely under the circumstances described, because, in any event, we do not view the basis for the protest as appropriate for our consideration. Miltope objects to DLA's specification of the PSI Peripheral Support Part No. 16-320010 as equal to Miltope's Part No. 43175, Rev. J, the original manufacturer's equipment used

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in the UYK-5 shipboard computer system. Miltope believes that the PSI drive solenoid will not provide adequate service, stating that Navy personnel have complained in the past that the PSI part is "unacceptable. Basically, Miltope complains that DLA is procuring replacement parts which in Miltope's opinion are inadequate to meet the Government's actual needs. Presumably, Miltope would benefit were it able to convince DLA of its position because it then would be a sole-source supplier.

Although this Office will review a protester's complaint that it is prevented from competing in a procurement because the procuring activity has adopted unduly restrictive specifications, we have done so because use of unjustifiable restrictions conflicts with those statutory and regulatory provisions which require the Government to procure needed supplies and services through free and open competition.

Quite a different situation is presented where, as here, it is asserted that the Government's interest as user of the product is not adequately protected. Here, the protester's apparent interest conflicts with the objective of our bid protest function, that is, to insure attainment of full and free competition. Assurance that sufficiently rigorous specifications are used is ordinarily of primary concern to procurement personnel and user activities. It is they who must suffer any difficulties resulting by reason of inadequate equipment. We therefore believe it would be inappropriate to resolve such issues pursuant to our bid protest function, absent evidence of fraud or willful misconduct by procurement or user personnel acting other than in good faith.

Accordingly, Miltope's protest is dismissed.

R. F. Kelly
Deputy Comptroller General
of the United States